

DAVID BURCHARD
CHAPTER 13 TRUSTEE
P.O. BOX 8059
FOSTER CITY, CA 94404
(650) 345-7801 FAX (650) 345-1514
(707) 544-5500 FAX (707) 544-0475

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

THOMAS J. CHEK
900 ARLENE WAY
NOVATO, CA 94947-6905

Debtor(s)

Chapter 13
Case No: 18-30006 DM
Date: October 17, 2018
Time: 1:10 PM
Cttrm: 450 GOLDEN GATE AVENUE
16th FLOOR - COURTROOM #17
SAN FRANCISCO, CA 94102

**AMENDED MOTION OF CHAPTER 13 TRUSTEE, DAVID BURCHARD,
TO DISMISS CASE PRIOR TO CONFIRMATION**

TO: THE ABOVE-NAMED DEBTOR(S) AND TO DEBTOR(S)' ATTORNEY OF RECORD HEREIN:

The Chapter 13 Trustee, DAVID BURCHARD, moves the Court for an order, dismissing this case for cause(s) for the reasons set forth below.

1. This Court has jurisdiction over this matter pursuant to Federal Rules of Bankruptcy Procedure 9013 and 9014, and Bankruptcy Local Rules 9013-1 and 9014-1. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).
2. This Amended Motion is based upon all documents and records on file, together with this Amended Motion, Declaration and any such additional documents, records and evidence which may be presented.
3. Debtor(s) filed for bankruptcy under Chapter 13 on 01/04/2018.
4. This amended motion for dismissal is made for cause pursuant to:
11 U.S.C. § 1307(c)(1) as there is unreasonable delay that is prejudicial to creditors.
5. The cause to dismiss this case exists as it is in the best interests of creditors and the bankruptcy estate. The Trustee therefore requests the Court enter an order dismissing this case.

If you wish to oppose dismissal of this Chapter 13 case, you or your attorney must file a timely opposition to this motion. You or your attorney must also appear at the hearing date listed in the notice and present argument in opposition to this motion.

DATED: October 4, 2018

DAVID BURCHARD
DAVID BURCHARD, Chapter 13 Trustee

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**DECLARATION IN SUPPORT OF CHAPTER 13 TRUSTEE,
DAVID BURCHARD'S, AMENDED MOTION TO DISMISS CASE
PRIOR TO CONFIRMATION**

I am the custodian and/or keeper of the business records referenced herein and, as such, I am qualified to certify the authenticity thereof. Additionally, I have personal knowledge of the matters stated in the Declaration. If called upon as a witness, I could and would competently testify to the facts contained herein.

After reviewing the books, records and files of the above-referenced Debtor(s), I make the following Declarations:

1. Debtor(s) filed the instant bankruptcy petition on 01/04/2018. There is unreasonable delay towards plan confirmation that is prejudicial to creditors.
2. As of the date hereof, the following fact(s) exists as cause for dismissal:

_____ Failure to make required payments to the Trustee. \$ _____ is in default under Ch. 13 Plan.
_____ Failure to attend Section 341 Meeting of Creditors scheduled on _____
 X Failure to respond to Trustee's requests – see attachment "A".

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on October 4, 2018 in Foster City, California.

Dated: October 4, 2018

DAVID BURCHARD

DAVID BURCHARD, Chapter 13 Trustee

CERTIFICATE OF SERVICE

I am over the age of 18 years and not a party to this action. I am employed by the Trustee whose business address is 1065 E. Hillsdale Blvd., Suite #200, Foster City, CA. On the date set forth below, I served a true and correct copy of the **Amended Motion of Chapter 13 Trustee, David Burchard, to Dismiss Case Prior to Confirmation, the Declaration in Support of Chapter 13 Trustee, David Burchard's Amended Motion to Dismiss Case Prior to Confirmation** and this **Certificate of Service**, on the persons listed below by following our ordinary business practice for service, which is either deposited in the ordinary course of business with the U.S. Postal Service by first class mail or served by electronic transmission from the Court, if applicable. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

THOMAS J. CHEK
900 ARLENE WAY
NOVATO, CA 94947-6905

The following recipients have been served via Court's Notice of Electronic Filing:

RUSSELL MARNE
russell@marne.com

Dated: October 4, 2018

BRISA RAMIREZ
BRISA RAMIREZ

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re:

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900 ARLENE WAY
NOVATO, CA 94947-6905

Case No.: 18-30006 DM
Chapter 13

ATTACHMENT "A"

Debtor(s)

1. Trustee is in receipt of objection to confirmation of plan by creditor, Towd Point Mortgage Trust 20017-4, U.S. Bank National Association, as Indenture Trustee, filed on February 26, 2018. Trustee requested that said objection to confirmation of plan be resolved prior to confirmation. The debtor has failed to resolve said objection.
2. The debtor's plan reflects a non-delinquent claim to be paid directly in Section 3.10; however, the creditor has filed a proof of claim which includes pre-petition arrears in the amount of \$4,216.05. Trustee requested an amended plan which removes this creditor from Section 3.10 as it appears debtor was not current with payments at the time the petition was filed. The debtor has failed to file an amended plan.
3. Trustee is in receipt of objection to confirmation of plan by creditor, Trinity Financial Services, LLC, filed on February 8, 2018, again on June 6, 2018, August 13, 2018, and October 3, 2018. Trustee requested that said objection to confirmation of plan be resolved prior to confirmation. The debtor has failed to resolve said objection.
4. The debtor filed a motion to avoid the lien of Trinity Financial Services. However, this creditor is also listed to be paid as a conduit in Section 3.07 of the plan. Trustee requested that the debtor withdraw the motion to value. The debtor has failed to withdraw said motion.
5. Per Section 3.07 of the debtor's plan, this is a conduit plan (Trinity Financial Services); however, the debtor has not provided the required Class 1 Checklist (Form NDC 1-3) and the Authorization to Release Information to Trustee Regarding Secured Claims Being Paid by the Trustee (Form NDC 1-4).
6. The debtor has checked the second box in Section 1.01(b) of the plan, but has failed to include any debts in Section 3.08, Class 2(C). Trustee requests an amended plan to resolve this discrepancy.

7. The debtor has checked the second box in Section 1.01(b) of the plan, but has failed to check box 3 (non-standard provisions) and has failed to include the necessary provision in Section 7, Nonstandard Provisions to modify a secured claim through the plan. Trustee requests an amended plan to include the necessary language at Section 7.
8. Schedule D lists a debt to Hillside Park East which has been omitted from the debtor's plan. Trustee requested an amended plan that provides accurate treatment of all of the debtor's secured debts. The debtor has failed to file an amended plan.
9. The debtor has filed a motion to avoid the lien of Hillside Park East Homeowners Association. Trustee requested that the debtor resolve said motion prior to confirmation. The debtor has failed to resolve said motion.
10. Schedule D lists a debt to Max Kemsley which has been omitted from the debtor's plan. Trustee requested an amended plan that provides accurate treatment of all of the debtor's secured debts. The debtor has failed to file an amended plan.
11. The debtor filed a motion to avoid the lien of Max Kemsley. Trustee requested that the debtor resolve said motion prior to confirmation. The debtor has failed to resolve said motion.
12. Schedule D lists a debt to Wells Fargo Bank which has been omitted from the debtor's plan. Trustee requested an amended plan that provides accurate treatment of all of the debtor's secured debts. The debtor has failed to file an amended plan.
13. The debtor has filed a motion to avoid the lien of Wells Fargo Bank. Trustee requested that the debtor resolve said motion prior to confirmation. The debtor has failed to resolve said motion.
14. The debtor's plan provides for payments of \$534.27 for 3 months, then \$748.76 for 4 months, then \$1,000 for the remaining term of the plan per month; however sections 3.06, 3.07, and 3.08 of the plan require monthly disbursements totaling \$1,181.04 to be paid through the plan in months 1-7, \$1,892.91 in months 8-12, \$1,802.91 in month 13, and \$1,592.91 for the remainder of the plan, not including the Trustee's administrative fee. Trustee is unable to administer the payments as proposed in the debtor's chapter 13 plan.
15. Schedule I lists a payroll deduction of \$2,036.96 for voluntary contributions to retirement plans. Trustee is in receipt of the debtor's non-filing spouse's payment advices that reflect a deduction of only \$1,617.57, but for a 401k "catch up." Trustee requested an amended Schedule I which accurately reflects the debtor's non-filing spouse's payroll deductions. Additionally, if the "catch up" is a repayment of a retirement loan, the Trustee requests a copy of the latest statement.
16. Schedule J lists an expense in the amount of \$502.00 for a vehicle installment payment that is being paid through the plan pursuant to Section 3.08 of the plan. Trustee requests an amended Schedule J removing this expense.